

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date: November 25, 2002

To: Interested Parties

From: Tim Method
Deputy Commissioner

Subject: Draft Nonrule Policy Document for Alternate Acute Mixing Zones

Background

While allowing alternate acute mixing zones, the existing water rules applicable to discharges to waters outside the Great Lakes system are not clear on the specific requirements for alternate acute mixing zones. Over the last several years this has led to a number of discussions between IDEM and dischargers proposing alternate acute mixing zones concerning the application requirements for and appropriate size of alternate acute mixing zones. IDEM had attempted to clarify these issues through rulemaking and received comments on proposed rule language that was included in the 1999 Triennial Review second notice. Since this rulemaking has not been finalized, IDEM has decided to implement alternate acute mixing zones through a nonrule policy document. The purpose of the nonrule policy document is to provide definitions for key terms that are not currently defined in the water rules, to provide the guidelines that IDEM will use in determining whether to allow an alternate acute mixing zone and to provide the application requirements for an alternate acute mixing zone.

Nonrule Policy Document

In developing the draft nonrule policy document, IDEM took into consideration past discussions with dischargers and comments received on the rule language included in the 1999 Triennial Review second notice. IDEM also took into consideration EPA guidance on mixing zones, the mixing zone requirements in other states in EPA Region 5 as well as other EPA regions and resources from experts in mixing zone modeling. Since the 1999 Triennial Review second notice, IDEM staff have also gained more experience working with mixing zone models and have participated in an instream mixing study.

Based on the discussions and information acquired over the last several years, IDEM believes that, at a minimum, a nonrule policy document on alternate acute mixing zones must clarify the factors that IDEM believes are essential to consider when delineating alternate acute mixing zones and must provide IDEM and dischargers the flexibility needed to delineate alternate acute mixing zones on a case-by-case basis.

The nonrule policy document consists of six sections. Section A describes the applicability of the document. Section B describes the purpose of the document and lists the water rules dealing with alternate acute mixing zones that are under consideration. Section C includes definitions for two terms that are key to the determination of alternate acute mixing zones. The term “discharge-induced mixing zone” is defined in a manner that allows an alternate acute mixing zone to be delineated on a case-by-case basis considering the mixing characteristics of the discharge with the receiving water. The term “high rate diffuser” is defined in a manner that clarifies the applicability of alternate acute mixing zones to outfall structures consisting of single or multiple ports and also clarifies the minimum exit velocity required from each port of a diffuser.

Section D includes the guidelines that IDEM will use in making a decision to approve or deny a proposed alternate acute mixing zone. IDEM believes that the delineation of alternate acute mixing zones should be done on a case-by-case basis using a holistic approach that takes into consideration the assimilative capacity of the receiving stream, the mixing characteristics of the discharge with the receiving stream and the designated and existing uses of the receiving stream. The draft nonrule policy document provides a framework that IDEM staff will use to make case-by-case determinations using available information and best professional judgment.

Section E includes the application requirements for the types of alternate acute mixing zone requests that IDEM expects to receive. The information required for a new request for an alternate acute mixing zone demonstration will differ from the information required for a discharger requesting that their approved alternate acute mixing zone be continued in a renewed permit. Section E also specifies how IDEM will document approved alternate acute mixing zones.

Section F includes the information required for IDEM to make a determination under Section D. While the document includes specific documentation, data gathering and modeling requirements, IDEM has left some flexibility in the application requirements so that the type and amount of information required for an applicant to collect and submit can be determined on a case-by-case basis.

IDEM's Request

In accordance with IC 13-14-1-11.5, IDEM cannot put a nonrule policy document into effect until thirty (30) days after the policy is made available for public inspection and comment and presented to the Water Board. While IDEM is not required by statute to solicit comment on draft nonrule policy documents, due to stakeholder interest in alternate acute mixing zones and past discussions with stakeholders regarding alternate acute mixing zones, IDEM is informally soliciting your thoughts on the attached draft nonrule policy document.

IDEM is only sending this memorandum to a limited group of stakeholders. This includes dischargers that currently are directly impacted by this policy and stakeholders who are participating on the Triennial Review Steering Committee. If you know of any other stakeholders that may want to submit their thoughts on this draft nonrule policy document, please forward this memorandum to them along with the draft nonrule policy document. After taking into consideration your thoughts and making any revisions, IDEM will make the nonrule policy document available for public inspection and comment and present it to the Water Board in accordance with IC 13-14-1-11.5.

IDEM appreciates any thoughts you may have concerning this draft nonrule policy document. If you have any questions regarding the content of the draft nonrule policy document, please contact John Elliott of the Office of Water Quality Permits Branch by phone or email. Written responses to this memorandum should also be sent to John Elliott by email or regular mail. We would appreciate your comments by December 20, 2002.

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